out that their Lordships will interfere, and the question whether this is a case which warrants interference requires further consideration. There remains one further matter to be considered before this question can be finally decided.

The learned trial Judge in the last paragraph of his judgment said — "Considering the evidence as whole, I am unable to accept the story of the accused as to his entry into the jungle or what he did there." If this view of the credibility of the appellant's story is accepted, the exclusion of evidence referred to in preceding paragraphs was immaterial to the result of the trial. In support of his view the learned trial Judge referred to a discrepancy between the appellant's evidence and his statement to the police and also to a discrepancy between his evidence and the evidence of a witness for the defence as to the period during which the appellant had stayed with the witness. Whatever might have been the effect of these two discrepancies on the mind of the learned trial Judge he had to, and did, consider the evidence as a whole. The argument that, in the circumstances of this case, the admission of the evidence wrongly excluded would have made a material difference to the consideration of the evidence as a whole and to the conclusion of the learned trial Judge upon credibility and duress has considerable force, particularly when the opinions of the assessors are taken into account. And the argument would have force even if the appellant be regarded as having given untrue evidence on the matters with regard to which the discrepancies arose. His evidence upon vital matters may or may not have been held to be untrue. Their Lordships feel unable to hold with any confidence that had the excluded evidence, which goes to the very root of the defence of duress, been admitted, the result of the trial would probably have been the same.

For the reasons which have been given their Lordships have humbly advised Her Majesty that the appeal be allowed.

*Appeal allowed.*

Solicitors: *Stanley Johnson & Allen; Charles. Russell & Co.*

---

## JAYARAM v. REG.

[C. C. A. (Whyatt C.J., Whitton and Tan Ah Tah JJ.) September 5, 1956]

[Singapore — Criminal Appeal No. 23 of 1956]

*Criminal Trial — Trial by jury — Summing-up — Question of onus of proof — Appellant's explanation — Direction to jury as to explanation.*

In certain cases where evidence is called for the defence giving an explanation which might entitle the accused to an acquittal, the learned Judge in his summing up should tell the Jury that even if they do not believe the explanation, nevertheless if they think it may be true and in consequence are left in some doubt as to whether the prosecution has proved the guilt of the accused beyond reasonable doubt, they should return a verdict of not guilty.

*Cases referred to:—*

(1) *R. v. Murtagh* 39 Cr. App. R. 72.

(2) *R. v. Hepworth* 39 Cr. App. R. 152; (1955) 3 W.L.R. 331; (1955) 2 All E.R. 918.

COURT OF CRIMINAL APPEAL.

*M. Karthigesu* for the appellant.

*S. E. Teh* (Crown Counsel) for the respondent.

**Whyatt C.J.** : — The appellant was convicted at the July Assizes of carrying a firearm contrary to section 3 of the Arms Offences Ordinance, 1947 and was sentenced to five years' imprisonment.

According to the evidence of the prosecution the appellant was seen by a party of police officers on the 18th April, 1956 at the junction of Macpherson Road and Kampong Lima, sitting on the cross-bar of a bicycle, which was being ridden by a man named Lim Eng Wah, and holding in his hands a parcel which he was resting on the handle bars of the bicycle. The police stopped the bicycle, opened the parcel and found inside the wrapping a revolver. The appellant did not dispute that he was carrying the parcel in the manner alleged by the prosecution but gave the explanation that it had been handed to him shortly before his arrest by Lim Eng Wah when the latter offered him a lift and he did not know what it contained.

The only substantial point in this appeal is whether the learned trial Judge sufficiently directed the jury on the question of onus of proof when he dealt in his summing-up with the appellant's explanation for carrying the revolver. No complaint is made with regard to that part of the summing-up in which the learned trial Judge directed the jury to consider the explanation and, if they believed it, to acquit the appellant, but it is contended that he should, in addition, have specifically directed the jury that the appellant was entitled to an acquittal if the explanation left them in doubt, and that it was not sufficient to tell the jury in general terms that they must be sure before they returned a verdict of guilty. In support of this contention Counsel for the appellant relied strongly on the case of *R. v. Murtagh*[1]. In that case the prosecution alleged that the accused had deliberately driven a car on to the pavement with the intention of hitting the deceased whereas the defence contended that the deceased attempted to throw something at the car with the result that the driver swerved and the car accidentally mounted the pavement. In delivering the

judgment of the Court Mr. Justice Hilbery expressed himself thus :—

"Having regard to the evidence, it was pre-eminently a case where it was essential for the judge to make clear to the jury three possible positions in which the jury might find themselves, bearing in mind throughout that it was not for the accused to establish their innocence: that is to say (1) if they accepted the explanation of the accused, they must acquit. (2) Short of accepting that explanation, if it left them in doubt, they must acquit. (3) On consideration of the whole of the evidence they must be satisfied of the guilt of the accused of one or other of the crimes alleged against them."

It will be observed that Mr. Justice Hilbery pointed out that the summing-up should, in the particular circumstances of that case, deal specifically with the position if the jury were not sure whether the explanation was true or false, and that it was not sufficient merely to give a general direction that they must be satisfied on the whole of the evidence before finding the accused guilty. A similar view was expressed by Lord Goddard in *R. v. Hepworth*[2], in which the learned Lord Chief Justice discussed the direction to be given to a jury in the class of case, commonly known as receiving cases, where the accused gives an explanation for being in possession of stolen goods. "In a receiving case", he said, "it is generally desirable, although there may be circumstances in the particular case which would not render it necessary, first, to remind the jury that the burden of proof remains on the prosecution and, secondly, to tell them that if an explanation for possession of the goods is given by the prisoner and although the jury may not be convinced that it is true, if they think it may be true, it would mean that the prosecution have not proved the case because the jury would remain in some degree of doubt."

It is clear, therefore, that in certain cases where evidence is called for the defence giving an explanation which might entitle the accused to an acquittal, the learned Judge in his summing-up should tell the jury that even if they do not believe the explanation, nevertheless if they think it may be true and in consequence are left in some doubt as to whether the prosecution have proved the guilt of the accused beyond reasonable doubt, they should return a verdict of not guilty.

It appears to the Court that the present case is one in which such a direction should have been given. It was common ground that the appellant was carrying the parcel which contained the revolver and the only substantial issue which the jury had to consider was the explanation advanced by him as to how he came to be in possession of the parcel. The position, therefore, was not dissimilar from that which frequently arises in receiving cases where the accused admits being in possession of stolen goods, but gives an explanation which might entitle him to an acquittal; in such cases, as has been pointed out, the direction should deal specifically with the position which arises if the jury are left in doubt as to whether the explanation is true or false. So also in the present case we are of the opinion that the learned Judge in his summing-up should not only have directed the jury to acquit if they believed the appellant's explanation but should also have told them that if it left them in doubt, they should likewise return a verdict of not guilty.

For these reasons, it would, in our view, be unsafe to allow the conviction to stand. The appeal is, therefore, allowed, the conviction is quashed and the appellant is discharged.

*Appeal allowed.*

Solicitor : *L. Rayner.*

---

## LEONG AH SENG v. REG.

[A. Cr. J. (Whyatt C.J.) December 7, 1955]

[Singapore — Magistrate's Appeal No. 234 of 1955]

*Identification — Accused identified by complainant when accused surrounded by a group of people who gave chase and caught him.*

Where the identification depended solely upon one person, namely the complainant, and was made when the accused was surrounded by a group of people who has pursued and caught him, such identification cannot be regarded as very satisfactory or reliable.

MAGISTRATE'S APPEAL.

Appellant in person.

*J. F. McWilliam* (Crown Counsel) for the respondent.

**Whyatt C.J.** : — The appellant was unrepresented on the appeal but asserted strongly from the dock that the Magistrate had been mistaken in finding him guilty of stealing these chickens. Crown Counsel agreed that the evidence for the prosecution was "sketchy". In particular the evidence did not satisfactorily explain how it came about that the accused, having run away as soon as the complainant approached him, was nevertheless found to be back on the spot surrounded by private people when the complainant returned with a police officer some considerable time afterwards. It would appear that the crowd — presumably a crowd of neighbours — had pursued the accused as he ran away, caught him and brought him back to the spot where the alleged theft took place. This theory however leaves unexplained how the crowd came to know of the accused's conduct. In fact this part of the case had to be filled in by speculation since there was no evidence on the record to explain it satisfactorily.